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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12  
13 UNITED STATES OF AMERICA, ) Case No. CR 21-306 EMC (AGT)  
14 Plaintiff, )  
15 v. ) **[PROPOSED] ORDER OF DETENTION  
16 LUIS ANTONIO TZUN-MAGANA, ) PENDING TRIAL**  
17 Defendant. )  
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19 The Court initially released the defendant on July 1, 2021, pursuant to a \$10,000 unsecured bond,  
20 with his romantic partner, Deyanira Espinosa-Lopez, acting as a surety and custodian. On July 25, 2023,  
21 the Court held a bail review hearing. The defendant did not appear for the hearing, and the United States  
22 orally moved for a bench warrant and initiated a proceeding for revocation of release pursuant to 18 U.S.C.  
23 § 3148.<sup>1</sup> The Court issued a warrant for the defendant's arrest.

24 On April 23, 2024, Mr. Tzun-Magana was arrested on the bench warrant and brought before the  
25 Court. The United States renewed its motion for revocation of bond and sought pretrial detention. Mr.  
26 Tzun-Magana sought release. The Court directed Pretrial Services to investigate the possibility of a  
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28 <sup>1</sup> The minutes reflect that the warrant was issued under 18 U.S.C. § 3146, the criminal failure to appear statute, *see* ECF No. 69, but that was likely an error.

1 residential drug treatment program and continued the hearing to April 29, 2024. On April 26, 2024, the  
2 United States filed a Memorandum in Support of its Motion for Revocation of Release (ECF No. 77).  
3 moved for Mr. Anderson's detention pending the final disposition of the allegations against him. At the  
4 hearings on April 23, 2024 and April 29, 2024, counsel for the defendant and counsel for the Government  
5 submitted proffers and argument on the issue of detention and what conditions, if any, would reasonably  
6 assure the appearance of the defendant as required and the safety of the community. The Court considered  
7 those proffers and arguments, the government's written memorandum, and information received from the  
8 Pretrial Services office.

9 Under 18 U.S.C. § 3148(b), if the Court finds by clear and convincing evidence that a defendant  
10 has violated a condition of release, and also finds either that there is no condition or combination of  
11 conditions that would reasonably assure the defendant will not flee or pose a danger, or that the  
12 defendant is unlikely to abide by any condition or combination of conditions of release, it must order the  
13 defendant detained.

14 Here, for the reasons set forth in the government's memorandum (ECF No. 77), and as stated on  
15 the record on April 23, 2024 and April 29, 2024, the Court finds the following:

16 (1) By clear and convincing evidence, the Court finds that the defendant has violated several  
17 conditions of his release, including the following:

18 a. Defendant must appear at all proceedings as ordered by the Court and must surrender  
19 for service of any sentence imposed;

20 b. Defendant must submit to supervision by Pretrial Services and must report immediately  
21 upon release and thereafter as directed to Pretrial Services;

22 c. Defendant must submit to drug and/or alcohol testing as directed by Pretrial Services;

23 d. Defendant must participate in substance abuse treatment, on an outpatient or residential  
24 basis, as directed by Pretrial Services.

25 (2) By a preponderance of the evidence, the Court finds that there is no condition or combination  
26 of conditions of release that will assure that the defendant will not flee, *see* 18 U.S.C.  
27 § 3148(b)(2)(A), and that the defendant is unlikely to abide by any condition or combination  
28 of conditions of release. *See* 18 U.S.C. § 3148(b)(2)(B).

1 For these reasons, pursuant to Title 18, United States Code, Section 3142(i),

2 IT IS HEREBY ORDERED that the defendant is remanded to the custody of the Attorney General  
3 or to the Attorney General's designated representative for confinement in a corrections facility separate,  
4 to the extent practicable, from persons awaiting or serving sentences or being held in custody pending  
5 appeal. The defendant must be afforded a reasonable opportunity for private consultation with defense  
6 counsel. On order of a court of the United States or on request of an attorney for the Government, the  
7 person in charge of the corrections facility must deliver the defendant to a United States Marshal for the  
8 purpose of an appearance in connection with a court proceeding.

9 Nothing in this Order precludes the defendant from seeking to reopen the detention hearing "if the  
10 judicial officer finds that information exists that was not known to the movant at the time of the hearing  
11 and that has a material bearing on the issue whether there are conditions of release that will reasonably  
12 assure the appearance of such person as required and the safety of any other person and the community."  
13 18 U.S.C. § 3142(f)(2).

14 IT IS SO ORDERED this 29th day of April, 2024.

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18 THE HONORABLE ALEX G. TSE  
19 UNITED STATES MAGISTRATE JUDGE  
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